INFORMATION NOTE FOR PROPERTY AND CASUALTY INSURANCE BROKERS

Professional obligations regarding:
Combating money laundering and terrorist financing
Compliance with financial sanctions

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DISCLAIMER

The following text has been translated by APCAL for information purposes. The French version of the text is the only authentic version

This guide is in no way a substitute for the personalised and objective documentation of each broker's controls and procedures.

These are guidance documents that are not kept up to date, unlike the AML procedures developed by external consultants, which are subject to a fee.

You will find all the documents and procedures available for purchase by our Members in the 'APCAL – Documents' section of our website.

The purpose of this information note is to clarify the professional obligations of property and casualty insurance brokers with regard to anti-money laundering and counter-terrorist financing, as well as the implementation of international financial sanctions.

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SUMMARY OF PROFESSIONAL OBLIGATIONS

A distinction is made between 1) the fight against money laundering and terrorist financing and 2) the implementation of restrictive measures and sanctions in the financial sector.

1. Combating money laundering and terrorist financing:

- The amended **Act** of 12 November 2004 on the prevention of money laundering and terrorist financing (“**LBCFT** Act**”**) applies to life insurance contracts and investment-related services, as well as Branch 14 (credit) and Branch 15 (surety) contracts.
- **The LBCFT Act does not apply to property and casualty insurance policies, with the exception of classes 14 (credit insurance) and 15 (surety insurance).**
- A broker who only sells property and casualty insurance policies, excluding classes 14 and 15, is not subject to the LBCFT Act. They are not required to put in place an AML risk assessment procedure.
- However, a property and casualty insurance broker is required to appoint a person responsible for compliance with professional obligations at management level[1] .
- A general insurance broker who, as a secondary activity, sells life insurance products or provides investment-related services is, however, subject to the LBCFT Act in respect of those services. In such cases, they must apply the procedures and mechanisms as set out in the latest version of the APCAL-VIE practical guide
- The non-life insurance broker must know their clients and their needs. Where they suspect that a transaction is being used for money laundering or terrorist financing purposes, they must report this suspicion to the Financial Intelligence Unit (CRF) via the GoAML portal.
- Similarly, should a non-life insurance broker ever be the victim of an underlying offence associated with an act of money laundering, it is in their best interests to report this suspicious transaction via the GoAML interface.
- Non-life insurance brokers are strongly advised to register on the CRF’s GoAML portal.

2. Financial sanctions

- **All Luxembourg brokers**, including non-life insurance brokers, **are subject to the Law** of 27 October 2010 **on financial sanctions**.

[1] As provided for in Article 1(1)(t) of CAA Regulation No. 20/03 of 30 July 2020 on the prevention of money laundering and terrorist financing

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- All brokers are required to check whether their clients and, where applicable, the beneficiaries of compensation are included on the sanctions lists.
- For non-life insurance brokers, **checks against financial sanctions lists can be carried out by comparing their professional contacts database and client database with the lists issued by the EU and the UN**
- The policyholder must be checked. If a payment is made to a beneficiary other than the policyholder, that beneficiary must also be included in the list of persons subject to screening.
- Checks must be carried out at the latest when the transfer is about to be executed. It is advisable to do so once the identity of the beneficiary of the insurance payment is known.
- The property and casualty insurance broker must be aware of the countries subject to financial sanctions or restrictive measures. They must check whether their clients' main place of residence and/or nationality is linked to a country subject to financial sanctions or restrictive measures.
- In the event of a match with a listed name, entity or group, or a sanctioned country, the broker must immediately inform the authorities, freeze the assets and block any transaction, failing which they may face criminal penalties.

Money laundering and terrorist financing

A broker who does not sell life insurance policies, nor provide services relating to fund investments, nor sell credit insurance or surety insurance policies is not subject to the Anti-Money Laundering and Counter-Terrorist Financing Act (LBCFT).

Such a broker is not required to establish AML procedures.

An insurance broker is only subject to the Act when they "deal in life insurance and other investment-related services" or when they carry out "credit or surety transactions"[2] .

A general insurance broker who markets life insurance policies or credit or surety insurance policies must establish and follow specific AML procedures.

These procedures shall apply only to life insurance, credit insurance and surety insurance business.

For their life, credit and surety insurance business, brokers must:

(i) take appropriate measures to **identify, assess and understand the money laundering and terrorist financing risks** (**ML/TF risks**) to which they are exposed,

[2] Article 1(3bis)(d) and Article 2(1), points 2 and 6quater, of the AML/CFT Act

(ii) (ii) clearly establish the identity of customers and beneficial owners, verify the identity of such customers and beneficial owners, assess and understand the purpose and intended nature of the business relationship, examine the source of the funds provided, and analyse customers' transactions,

(iii) (iii) have an adequate internal organisational structure; and (iv) cooperate with authorities such as the CRF and the CAA.

For these matters, reference should be made to the latest version of the APCAL-VIE practical guide.

The offence of money laundering is only committed if the perpetrator handles or holds funds which they know, or could not have been unaware, originate from one of the predicate offences associated with the act of money laundering.

As any financial transaction can, by definition, be used to conceal the origin of the funds involved, the payment of insurance premiums and the receipt of claims payments may also be used to launder funds derived from one of the underlying offences associated with[3] .

The general insurance broker therefore also risks becoming involved in a criminal money laundering case if criminals manage to use the general insurance products they distribute to conceal the origin of the funds.

They will then have to prove that this money laundering took place without their knowledge and that they were unaware of having facilitated "the false representation of the nature, origin, location, disposition, movement or ownership of property, or the aiding and abetting of an operation involving the placement, concealment, transfer, conversion, acquisition or possession"[4] .

However, this potential legal risk is significantly reduced if the property and casualty insurance broker is not involved in the collection of premiums or the payment of claims.

Nevertheless, to avoid this potential legal risk, **the APCAL advises its members who are non-life insurance brokers to remain vigilant regarding money laundering and terrorist financing risks and to apply due diligence measures proportionate to the risk, based on the risk assessment carried out, or, in the absence of a formal risk assessment, based on their personal assessment of the risk.**

The obligation to combat money laundering is an obligation of means. For a non-regulated entity such as a property and casualty insurance broker, the measures to be implemented

[3] Article 1 of the Anti-Money Laundering and Counter-Terrorist Financing Act: "Money laundering [...] means any act as defined in Article 506-1 of the Criminal Code and Article 8-1 of the amended Act of 19 February 1973 concerning the sale of medicinal substances and the fight against drug addiction"

[4] Penal Code, Article 506-1. 1) Extracts from the definition of the criminal offence of money laundering

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must be proportionate to the risk of money laundering. For property and casualty insurance brokers, this risk is considered low by the legislator.

The APCAL therefore advises property and casualty insurance brokers to remain vigilant and to incorporate this vigilance into their verification procedures.

In the event of reasonable suspicion regarding (i) a transaction or (ii) the activities of a client or any other person associated with them, **it is advisable to contact the CRF,** whose contact details are set out in the **APCAL-VIE practical guide**. To do so, the P&C broker must use the designated communication channel, which is the CRF's GoAML portal. Registration on this portal is strongly recommended[5] , even for brokers dealing exclusively in P&C insurance and who are therefore not subject to the regulations.

International financial sanctions

APCAL has published a **guide on financial penalties**, which explains how Luxembourg brokers are required to implement financial penalties. As this obligation applies equally to non-life and life insurance brokers, APCAL has produced a single guide for all brokers.

This guide can be viewed at www.apcal.lu.

Disclaimer

The recommendations set out in this information note must not be interpreted in a manner contrary to national and European legislation. This note does not replace the obligation to consult the applicable legislation. Only these texts are authoritative.

This note has been drawn up with the utmost care by APCAL. However, it is not a recommendation tailored to a specific situation but a general, non-exhaustive interpretation of laws and regulations. The document should be regarded as an aid to individual brokers in drawing up a policy suited to their operations. APCAL cannot be held liable for the application of the advice contained in this note by individual brokers.

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[5] https://goaml.b2g.etat.lu/WebRegistration/NewEntityCR

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Appendix 1

Legal basis LBCFT

LBCFT Act: Amended Act of 12 November 2004 on the prevention of money laundering and the financing of terrorism

AML/CFT Regulation: The Grand-Ducal Regulation of 1 February 2010

CAA Regulation 20/03 of 30 July 2020 on the prevention of money laundering and terrorist financing

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